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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 VICTOR DEGUZMAN, an individual,) Case No.: 12CV2064-JM-DHB
12)
13 Plaintiff) **FIRST AMENDED COMPLAINT AND**
14) **DEMAND FOR JURY TRIAL (Unlawful**
15 v.) **Debt Collection Practices)**
16)
17 LEGAL RECOVERY LAW OFFICES,) **LEGAL RECOVERY LAW OFFICES,**
18 INC., a Corporation; MIDLAND) **INC., a Corporation; MIDLAND**
19 CREDIT MANAGEMENT, INC. and) **CREDIT MANAGEMENT, INC. and**
20 DOES 1 through 10 inclusive,) **DOES 1 through 10 inclusive,**
21) **Defendants.**
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23 **I. INTRODUCTION**

24 1. This is an action for damages brought by an individual consumer against
25 Defendants for violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.*
26 (“FDCPA”) and the California Rosenthal Act, Civil Code §1788 *et seq.* (“Rosenthal Act”)
27 both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair
28 practices and invasion of privacy.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §1331. Supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. §1367. Venue in this District is proper in that the Defendants transact business here and the conduct complained of occurred here.

III. PARTIES

3. Plaintiff VICTOR DEGUZMAN, is a natural person residing in the state of California, County of San Diego.

4. Defendant LEGAL RECOVERY LAW OFFICES, INC. ("LRLO") is a corporation doing business of collecting debts in California operating from an address at 5030 Camino de la Siesta, Suite 340, San Diego, CA 92108.

4. Defendant MIDLAND CREDIT MANAGEMENT, INC. ("MIDLAND") is a limited liability company doing business of collecting debts in California operating from an address at 3111 Camino Del Rio North, Suite 1300, San Diego, CA 92108.

5. Defendants are engaged in the collection of debts from consumers using the mail and telephone. Defendants regularly attempt to collect consumer debts alleged to be due to another. Defendants are "debt collectors" as defined by the FDCPA, 15 U.S.C. §1692a(6), and MIDLAND is a debt collector as defined by the Rosenthal Act, California Civil Code 1788.2(c).

6. The true names and capacities, whether individual, corporate (including officers and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes, and alleges that each Defendant designated as a DOE is involved in or is in some manner responsible as a principal, beneficiary, agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or otherwise, for the agreements, transactions, events and/or acts hereinafter described, and thereby proximately caused injuries and damages to Plaintiff. Plaintiff requests that when the true names and capacities of these DOE Defendants are ascertained, they may be inserted in

1 all subsequent proceedings, and that this action may proceed against them under their true
2 names.

3 7. Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C. 1692a(3).

4 8. The purported debt that Defendants attempted to collect from Plaintiff was a
5 “debt” as defined by the FDCPA, 15 U.S.C. §1692a(5).

6 9. Plaintiff is a “debtor” as defined by the Rosenthal Act, California Civil Code
7 1788.2(h).

8 10. The purported debt which Defendants attempted to collect from Plaintiff was a
9 “consumer debt” as defined by the Rosenthal Act, California Civil Code §1788.2(f).

10 11. At all times relevant LRLO was the agent of MIDLAND. MIDLAND is
11 vicariously liable for the acts and omissions of LRLO.

12 **IV. FACTUAL ALLEGATIONS**

13 12. The FDCPA was enacted to “eliminate abusive debt collection practices by debt
14 collectors, to insure those debt collectors who refrain from using abusive debt collection
15 practices are not competitively disadvantaged, and to promote consistent state action to
16 protect consumers against debt collection abuses.”

17 13. At a time unknown, MIDLAND acquired information regarding a debt (the
18 “Debt”) that Plaintiff allegedly incurred.

19 14. MIDLAND and LRLO then began an effort to collect the Debt from Plaintiff.

20 15. In or around October 2011, LRLO began calling Plaintiff in an attempt to collect
21 the DEBT.

22 16. For approximately four months, LRLO was calling Plaintiff on a near daily basis
23 Monday through Saturday.

24 17. Within five days from the initial communication, LRLO did not send Plaintiff
25 the notice required by 15 U.S.C. §1692g.

26 18. The representative from LRLO informed Plaintiff regarding the Debt and
27 Plaintiff requested validation.

28 19. LRLO did not send Plaintiff the requested validation.

1 with the Plaintiff at a time or place known or which should have been
2 known to be inconvenient to the Plaintiff;

- 3 (d) The Defendants violated 15 U.S.C. § 1692c(a)(3) by contacting the
4 Plaintiff's place of employment when the debt collector knew or had
5 reason to know that the Plaintiff's employer prohibited such
6 communication;
- 7 (e) The Defendants violated 15 U.S.C. § 1692c(b) by communicating with a
8 third person in connection with the collection of a debt;
- 9 (f) The Defendants violated 15 U.S.C. § 1692d by engaging in conduct the
10 natural consequence of which is to harass, oppress, and abuse persons in
11 connection with the collection of the alleged debt;
- 12 (g) The Defendants violated 15 U.S.C. § 1692d(5) by causing the phone to
13 ring or engaging a person in telephone conversations repeatedly with the
14 intent to harass, oppress, and abuse the Plaintiff in connection with the
15 collection of the Debt;
- 16 (h) The Defendants violated 15 U.S.C. § 1692d(6) by placing telephone
17 calls without disclosing his/her true identity;
- 18 (i) The Defendants violated 15 U.S.C. § 1692e by using false, deceptive, and
19 misleading representations or means in connection with the collection of a
20 debt;
- 21 (j) The Defendants violated 15 U.S.C. § 1692e(10) by using a false
22 representation and deceptive means to collect or attempt to collect any
23 debt or to obtain information regarding a consumer;
- 24 (k) The Defendants violated 15 U.S.C. § 1692e(14) by including in a
25 communication a name other than the true name of the debt
26 collector's business;
- 27 (l) The Defendants violated 15 U.S.C. § 1692(f) by using unfair or
28 unconscionable means to collect or attempt to collect a debt;

- 1 (m) The Defendants violated 15 U.S.C. § 1692g(a) by failing to send the
2 Plaintiff a validation notice within five days of the initial communication;
3 and
4 (n) The Defendants violated 15 U.S.C. § 1692g(b) by failing to cease
5 collection activities after the Plaintiff made a timely validation
6 request.

7 30. As a result of the above violations of the FDCPA, Defendants are liable to the
8 Plaintiff for Plaintiff's actual damages, statutory damages, and attorney's fees and costs
9 pursuant to 15 U.S.C. §1692k.

10 **VI. SECOND CLAIM FOR RELIEF**

11 **(Against All Defendants for Violation of the Rosenthal Act)**

12 31. Plaintiff repeats, realleges, and incorporates by reference all of the foregoing
13 paragraphs.

14 32. Defendants violated the Rosenthal Act, by including but not limited to, the
15 following:

- 16 (a) The Defendants violated California Civil Code §1788.11(b) by
17 placing telephone calls without disclosure of the caller's true identity;
18 (b) The Defendants violated California Civil Code §1788.11(d) by causing a
19 telephone to ring repeatedly or continuously to annoy the person called;
20 (c) The Defendants violated California Civil Code §1788.11(e) by
21 communicating with the Plaintiff with such frequency as to be
22 unreasonable and to constitute an harassment to the Plaintiff under the
23 circumstances;
24 (d) The Defendants violated California Civil Code §1788.12(a) by
25 communicating with the Plaintiff's employer regarding the debtor's
26 debt;
27 (e) The Defendants violated California Civil Code §1788.17 by failing to
28 comply with the FDCPA as alleged above; and

1 (f) The Defendants violated California Civil Code §1812.700 by failing
2 to include the notice required by this section.

3 33. Defendants' acts as described above were done intentionally with the purpose of
4 coercing Plaintiff to pay the alleged debt.

5 34. As a proximate result of Defendants' violations enumerated above, Plaintiff has
6 been damaged in amounts which are subject to proof.

7 35. Defendants' violations of the Rosenthal Act were willful and knowing.
8 Defendants are therefore liable to Plaintiff for Plaintiff's actual damages, statutory damages,
9 and attorney's fees and costs pursuant to California Civil Code §1788.30.

10 **VII. THIRD CLAIM FOR RELIEF**

11 **(Against all Defendants for Invasion of Privacy)**

12 36. Plaintiff repeats, realleges, and incorporates by reference all of the foregoing
13 paragraphs.

14 37. Plaintiff had a reasonable expectation of privacy in his solitude, seclusion, and
15 private concerns and affairs.

16 38. Defendants willfully and intentionally intruded into Plaintiff's solitude,
17 seclusion and private affairs by repeatedly and unlawfully attempting to collect a debt.

18 39. Defendants' intrusions would be highly offensive to a reasonable person and did
19 in fact offend Plaintiff.

20 40. As a result of such invasions of privacy, Plaintiff was harmed and caused great
21 mental and physical pain.

22 41. Defendants acted with oppression, fraud or malice, and Defendants are therefore
23 liable to Plaintiff for damages in an amount to be proven at trial, and for punitive damages.

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1 **WHEREFORE**, Plaintiff respectfully requests that judgment be entered against
2 Defendants and each of them for the following:

- 3 (a) Actual damages;
4 (b) Statutory damages pursuant to 15 U.S.C. §1692k and California Civil Code
5 §1788.30(a);
6 (c) Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k and
7 California Civil Code §1788.30(b) and §1788.30(c);
8 (d) For punitive damages;
9 (e) For such other and further relief as the Court may deem just and proper.

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11 Date: May 8, 2013

12 /s/ Jeremy S. Golden
13 Jeremy S. Golden,
14 Attorney for Plaintiff
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17 **DEMAND FOR JURY TRIAL**

18 Please take notice that Plaintiff demands trial by jury in this action.
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21 Date: May 8, 2013

22 /s/ Jeremy S. Golden
23 Jeremy S. Golden,
24 Attorney for Plaintiff
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